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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DEMETRIC A. BROOKS,

Defendant and Appellant.

B288769

(Los Angeles County  
Super. Ct. No. NA105213)

APPEAL from a judgment of the Superior Court of Los Angeles County, Mark C. Kim, Judge. Affirmed and remanded with instructions.

Lindsey M. Ball, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Shawn McGahey Webb and Shezad H. Thakor, Deputy Attorneys General, for Plaintiff and Respondent.

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A jury found Demetric A. Brooks guilty of five of the six counts alleged against him based on actions he took during and after a domestic dispute. The trial court also found true that the defendant had suffered each of three prior convictions under Penal Code section 667, subdivision (a)(1). The trial court struck one of Brooks's prior strike convictions over the People's objection after granting a motion based on *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. Based on the jury verdict, its true findings on the prior convictions, and the *Romero* motion, the trial court sentenced Brooks to 27 years and 4 months in prison, which included two five-year terms imposed for prior serious felony convictions under section 667, subdivision (a)(1).

Brooks timely appealed.

Brooks contends we must remand the case to give the trial court the opportunity to exercise its discretion in the first instance to strike his prior serious felony conviction enhancements pursuant to Senate Bill No. 1393, which had not been enacted by the time of Brooks's sentencing, but has since gone into effect.

Brooks and the People agree that Senate Bill No. 1393 applies to Brooks's sentence. The People argue, however, that the trial court's statements at Brooks's sentencing "show[] that the trial court clearly indicated when it originally sentenced the defendant that it would not in any event" have stricken either one or both of the prior serious felony conviction enhancements it imposed if it had the discretion to do so. (*People v. McDaniels* (2018) 22 Cal.App.5th 420, 425 (*McDaniels*).) In support of their argument, the People remind us that the trial court stated on the record that Brooks's conduct was "inexcusable," that he had "scarred someone for life," and that he had an "extensive criminal

record.”<sup>1</sup> Those statements coupled with the 27 year and 4 month sentence, the People contend, “clearly indicate that [the trial court] would not have dismissed [Brooks’s] prior serious felony conviction enhancements even if it had discretion.”

We disagree with the People’s contention. The trial court granted Brooks’s *Romero* motion, removing the possibility of the imposition of a life sentence under the “Three Strikes” law. And even if the trial court had not granted the *Romero* motion and had imposed the full sentence the People requested, trying to determine what a trial court would have done in exercising its discretion in the first instance is a speculative exercise “unless the record reveals a clear indication of how the court would have exercised its discretion.” (*McDaniels, supra*, 22 Cal.App.5th at p. 426.) The record here does not reveal a clear indication of how the trial court would have exercised its discretion. “Given the[] high stakes [involved], it seems to us that a reviewing court has all the more reason to allow the trial court to decide in the first instance whether these enhancements should be stricken, even when the reviewing court considers it reasonably probable that the sentence will not be modified on remand.” (*Id.* at p. 427.)

### **DISPOSITION**

The conviction is affirmed. On remand, the trial court shall determine whether to strike any enhancements imposed under section 667, subdivision (a)(1). If the court strikes any enhancements, the court shall reduce the sentence accordingly, amend the abstract of judgment, and forward the amended

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<sup>1</sup> The trial court made all of those statements in the context of striking a 27-year-old prior conviction on Brooks’s *Romero* motion over the People’s objection.

abstract of judgment to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

CHANEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.\*

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\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.